

---

**Routine Program Changes  
To  
Commonwealth of Virginia Coastal Resources Management  
Program**

**Request for Concurrence  
September 19, 2005**

Executive Order 23 of June 26, 2002  
Continuation of Virginia Coastal Resources Management Program

Submitted by: The Commonwealth of Virginia  
Department of Environmental Quality  
Virginia Coastal Program  
629 East Main Street  
Richmond, Virginia 23219

## **Introduction**

The following constitutes a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur in the incorporation of Routine Program Changes to the Commonwealth of Virginia's Coastal Management Program (CMP), also referred to as the Virginia Coastal Program (VCP).

The Virginia Coastal Program was established in 1986 through Executive Order 13. The VCP has continued through subsequent executive orders outlining the Virginia Coastal Program's policy goals, the agencies responsible for implementing and enforcing the program as well as the conflict resolution process. In 1998, a Routine Program Change was approved by NOAA incorporating Executive Order 23, which superseded E.O. 13. In 2002, a revised Executive Order 23 was signed. The revised Order reorganized the Program's goals from twenty-five to ten goals, grouped under three overarching policy goals: (1) Coastal Resource Protection; (2) Coastal Resource Sustainable Use; and (3) Coastal Management Coordination.

In accordance with requirements for Routine Program Changes as set forth in Coastal Zone Management ACT (CZMA) §306(e), 15 C.F.R. §923.84, and the guidelines for Routine Program Changes contained in OCRM's Program Change Guidance from July 1996, the Commonwealth of Virginia has prepared the following analysis of the changes to Executive Order 23 as effected on June 26, 2002. The analysis: (A) explains why the proffered changes to the State CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and (B) identifies the enforceable policies to be added to the management program, describes the nature of each program change, and examines the impact the changes have on the existing management program.

## **Analysis of Changes**

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this analysis of the submitted changes notifies OCRM of the Routine Program Change action in connection with Executive Order 23.

Under 15 C.F.R. §923.80(d), Amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization;
- (5) coordination, public involvement and national interest.

OCRM's Program Change Guidance from July 1996 states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by

reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources. OCRM's Program Change Guidance also states that an explanation why a proposed change will not result in an Amendment should describe the elements of the State CMP that are affected.

The submitted changes to the Executive Order address the mission of the Virginia Coastal Program; the lead agency to administer the VCP; the reorganization, revision and refining of the stated goals; the incorporation of the concepts of "restoration" and "sustainability" into the VCP; the provision of current information, technical advice and scientific data to aid decision-making; and the identification of agencies with primary and concurrent responsibility for enforcing the VCP. Under 15 C.F.R. §923.80(d) and OCRM's Guidance, these changes could be interpreted as affecting elements of the Commonwealth's VCP's enforceable policies and permissible land and water uses within the State coastal zone. However, these changes do not substantially change the uses subject to management, special management areas or boundaries, or the authorities and organization or coordination of the Virginia CMP. These submitted changes address, refine, and clarify existing State enforceable policies and permissible uses rather than prescribe new enforceable policies and uses.

The 2002 version of Executive Order 23 adds a one-sentence mission statement that integrates the concepts of community vitality and sustainable use across the Virginia Coastal Program. These concepts inform the reorganization of the program goals as reflected in the three revised goal headings. The mission statement and goal headings do not add new elements or make substantial changes to the VCP.

Executive Order 23 was restructured in 2002 to list ten goals rather than the twenty-five stated in the 1998 order. The prior goals were restated and condensed. The only arguably new item may be found within the statement of Goal 7 which promotes renewable energy production along with other forms of energy activities recognized in the 1998 Executive Order. These modifications to the VCP goal statements are not so significant that they substantially affect any of the five coastal program areas.

The final section of the 2002 Executive Order revises slightly the role of the Chesapeake Bay Local Assistance Department in that it lists the agency among the six Virginia agencies that have "primary responsibility" for implementing the enforceable policies of the VCP, rather than among the "other agencies" that have responsibilities, where it had been previously listed in 1998. However, this revision is simply a matter of form following actual practice, since the Chesapeake Bay Act and regulations administered by CBLAD were incorporated by NOAA into the VCP in 2000. Moreover, by legislation in 2004, CBLAD was merged into the Department of Conservation and Recreation, which was already listed as a Virginia agency with "primary responsibility." Similarly, the listing of the Department of Transportation and the Economic Development Partnership in the category of "other agencies" with responsibilities for assisting in implementing the VCP acknowledges past and ongoing practice as these agencies have always been subject to the VCP's enforceable policies.

The following pages provide a description and analysis of each change submitted for incorporation into the CMP. The description and analysis of each change is organized in chart format that identifies the enforceable policies to be added to the management program, describes the nature of each program change, and examines the impact the changes have on the existing management program.

Clause	Status of Clause in EO 1998	Change to Clause in EO 2002	Significance of Change
Preamble	<ul style="list-style-type: none"> <li>• Did not contain mission statement.</li> <li>• Third sentence read: “I direct all state agencies to carry out their legally established duties consistent with this Program and in a manner that promotes coordination among agencies in achieving the Program’s goals and objectives.”</li> <li>• Did not mention the name of the lead agency for the Virginia Coastal Resources Management Program.</li> </ul>	<ul style="list-style-type: none"> <li>• Addition of mission statement: “The Program’s mission is to create more vital and sustainable coastal communities and ecosystems.”</li> <li>• Adds words “all government” before “agencies” and deletes phrase “in achieving the Program’s goals and objectives.”</li> <li>• Added the final sentence: “The Department of Environmental Quality shall serve as the lead agency for this networked program and shall be responsible for allocation and assignment of all federal funds received for the Virginia Coastal Resources Management Program Implementation Grant.</li> </ul>	<ul style="list-style-type: none"> <li>• Not substantial changes. Mission statement summarizes program goals without adding new goals.</li> <li>• Editorial changes eliminated redundant language.</li> <li>• Identification of the Department of Environmental Quality as the lead agency acknowledges the actual ongoing role of the agency.</li> </ul>

Goal Headings	<ul style="list-style-type: none"> <li>• Prior 25 goal statements were grouped under seven headings:               <ol style="list-style-type: none"> <li>(1) Prevention of Environmental Pollution and Protection of Public Health</li> <li>(2) Prevention of Damage to Natural Resource Base</li> <li>(3) Protection of Public and Private Investment</li> <li>(4) Promotion of Resources Development</li> <li>(5) Promotion of Public Recreation Opportunities</li> <li>(6) Promotion of Efficient Government Operation</li> <li>(7) Provision of Technical Assistance and Information</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Goal statements were revised, reduced to 10, and reorganized under three headings:               <ol style="list-style-type: none"> <li>(1) Coastal Resource Protection (Goals 1-4)</li> <li>(2) Coastal Resource Sustainable Use (Goals 5-7)</li> <li>(3) Coastal Management Coordination (Goals 8-10)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Change integrates and states the purposes and aims previously addressed, but reorganizes them to distinguish resource protection goals, sustainable use goals, and coordination goals.</li> </ul>
Goal 1	<ul style="list-style-type: none"> <li>• EO 1998 Goals included:               <p>Goal 3: To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective point source water pollution management, site selection and planning, and improved containment and cleanup programs;</p> <p>Goal 6: To protect ecologically significant tidal marshes from despoliation or destruction;</p> </li> </ul>	<ul style="list-style-type: none"> <li>• Revised Goal 1 condensed EO 1998 goals 3, 6, 7 10 and 11:               <p>To protect and restore coastal resources, habitats and species of the commonwealth. These include, but are not limited to, wetlands, subaqueous lands and vegetation, sand dune systems, barrier islands, underwater or maritime cultural resources, riparian forested buffers, and endangered or threatened species.</p> </li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest. Goals statement also eliminated “means” from the prior goals which should have been more properly focused on “ends.”</li> </ul>

	<p>Goal 7: To minimize damage to the productivity and diversity of the marine environment resulting from alteration of subaqueous lands and aquatic vegetation;</p> <p>Goal 10: To preserve and maintain wildlife and wildlife habitat areas and to facilitate preservation and restoration of endangered and threatened flora and fauna.</p> <p>Goal 11: To conserve coastal sand dune systems.</p>		
Goal 2	<ul style="list-style-type: none"> <li>• EO 1998 Goals included: <p>Goal 1: To maintain, protect, and improve the quality of coastal waters suitable for the propagation of aquatic life and recreation involving body contact;</p> <p>Goal 2: To reduce non-point pollution, caused by inappropriate land uses and adequate land management practices, in tidal streams, estuaries, embayments and coastal waters;</p> <p>Goal 3: To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective point source water pollution management, site selection and planning,</p> </li> </ul>	<ul style="list-style-type: none"> <li>• Revised Goal 2 condensed EO 1998 Goals 1, 2, 3, 5 and 9: <p>To restore and maintain the quality of all coastal waters for human and ecosystem health through protection from adverse effects of excess nutrients, toxics, pathogens and sedimentation.</p> </li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest.</li> </ul>

	<p>and improved containment and cleanup programs;</p> <p>Goal 5: To protect the public health from contaminated seafood;</p> <p>Goal 9: To reduce the adverse effects of sedimentation on productive marine systems;</p>		
Goal 3	<ul style="list-style-type: none"> <li>• EO 1998 Goal was:</li> </ul> <p>Goal 4: To prevent significant deterioration of air quality;</p>	<ul style="list-style-type: none"> <li>• Goal 3 rewrote prior Goal to read: To protect air quality.</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest. Recognizes that coastal resource protection includes more than PSD program.</li> </ul>



Goal 4	<ul style="list-style-type: none"> <li>• EO 1998 Goals included:  Goal 12: To reduce or prevent losses of property, tax base, and public facilities caused by shorefront erosion;  Goal 13: To minimize dangers to life and property caused by coastal flooding and storms.</li> </ul>	<ul style="list-style-type: none"> <li>• Goal 4 rewrote EO 1998 Goals 12 and 13:  To reduce or prevent losses of coastal habitat, life and property caused by shoreline erosion, storms and other coastal hazards in a manner that balances environmental and economic considerations;</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest.</li> </ul>
Goal 5	<ul style="list-style-type: none"> <li>• EO 1998 Goals include:  Goal 5: To protect the public health from contaminated seafood;  Goal 8: To minimize damage to the productivity and diversity of the marine environment resulting from the disruption of finfish and shellfish population balances;  Goal 15: To protect and maintain existing uses of estuarine waters for shellfish propagation and marketing;  Goal 18: To maintain or improve productive fisheries;</li> </ul>	<ul style="list-style-type: none"> <li>• Goal 5 combines EO 1998 Goals 5, 8, 15 and 18 (public health goal element addressed in revised goal 2 above):  To provide for sustainable wild fisheries and aquaculture.</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest. The rewording of this goal does not affect the laws and regulations that govern fisheries management in the Commonwealth.</li> <li>• The VCP has always focused on protecting wild populations for productive fisheries and aquaculture. The revised goal clarifies the effort to strike a feasible balance between use, maintenance and protection.</li> </ul>

Goal 6	<ul style="list-style-type: none"> <li>• EO 1998 Goal was stated as:  Goal 21: To provide and increase public recreational access to coastal waters and shorefront lands.</li> </ul>	<ul style="list-style-type: none"> <li>• Goal 6 rewrote EO 1998 Goal 21:  To promote sustainable ecotourism and to increase and improve public access to coastal waters and shorefront lands compatible with resource protection goals.</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest.</li> <li>• Revision derives sustainability goal from the other stated goals and from the overarching aims of the VCP.</li> </ul>
Goal 7	<ul style="list-style-type: none"> <li>• EO 1998 Goals included:  Goal 19: To encourage exploration and production of outer continental shelf energy reserves:  Goal 20: To provide for the extraction of mineral resources in a manner consistent with proper environmental practices.</li> </ul>	<ul style="list-style-type: none"> <li>• Goal 7 combined EO 1998 Goals 19 and 20, and included recognition of renewable energy.  To promote renewable energy production and provide for appropriate extraction of energy and mineral resources consistent with proper environmental practices.</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest. The rewording of this goal does not affect the laws and regulations that govern energy facility siting and energy production in the Commonwealth.</li> <li>• The restructured goal places a new emphasis on renewable energy production and qualifies the kind of extractive activities that can be conducted as appropriate. This focus is consistent with the CZMA's declaration that states should try to achieve "wise use of the land and water resources" and to address competing demands on coastal resources.</li> </ul>
Goal 8	<ul style="list-style-type: none"> <li>• EO 1998 Goals included:</li> </ul>	<ul style="list-style-type: none"> <li>• Goal 8 condensed EO 1998 Goal 16</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not</li> </ul>

	<p>Goal 16: To encourage provision of commercial and industrial access to coastal waters where essential to desired economic activities;</p> <p>Goal 17: To coordinate the Commonwealth's planning processes for major projects to facilitate consideration of alternative locations for such facilities within the context of long-term development patterns and their implications;</p>	<p>and 17:</p> <p>To ensure sustainable development on coastal lands and support access for water-dependent development through effective coordination of governmental planning processes.</p>	<p>effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest.</p> <ul style="list-style-type: none"> <li>• Change emphasizes the goal of sustainability and inserts the necessary element of coordinated government planning.</li> </ul>
Goal 9	<ul style="list-style-type: none"> <li>• EO 1998 Goals included:</li> </ul> <p>Goal 23: To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources;</p>	<ul style="list-style-type: none"> <li>• Goal 9 restated EO 1998 Goal 23 purposes:</li> </ul> <p>To avoid and minimize coastal resource use conflicts through research, planning and a forum for coordination and facilitation among government agencies, interest groups and citizens.</p>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest.</li> </ul>
Goal 10	<ul style="list-style-type: none"> <li>• EO 1998 Goals included:</li> </ul> <p>Goal 23: To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources;</p> <p>Goal 24: To conduct continuing</p>	<ul style="list-style-type: none"> <li>• Goal 10 combined and condensed EO 1998 Goals 23, 24, and 25:</li> </ul> <p>To promote informed decision-making by maximizing the availability of up-to-date educational information, technical advice and scientific data.</p>	<ul style="list-style-type: none"> <li>• Not a substantial change. Does not effect a change in uses, special management areas, boundaries, authorities, or coordination or national interest.</li> </ul>

	<p>educational programs in Coastal Resources Management for local and state officials;</p> <p>Goal 25: To maintain and improve data bases, maps and photoimagery to support decision-makers' needs.</p>		
Eliminated/ reorganized goals	<ul style="list-style-type: none"> <li>• EO 1998 Goal 14 was: To promote the wise use of coastal resources for the economic benefit and employment of the citizens of the Commonwealth;</li> <li>• EO 1998 Goal 22 was: To provide a shoreline permitting procedure, administered at the local level wherever possible, which assures adequate review and mitigation of probable impacts as well as timely response to applicants.</li> </ul>	<ul style="list-style-type: none"> <li>• EO 1998 Goal 14 was incorporated into the Mission Statement, into the new goal heading "Coastal Resource Sustainable Use," and into new Goals 5-8.</li> <li>• EO 1998 Goal 22 is reflected in Goals 8,9 and 10 but eliminated as a separate goal because it did not state a goal but a means, and because permitting procedures are spelled out in the enforceable policies.</li> </ul>	<ul style="list-style-type: none"> <li>• Not substantial changes. The rescissions resulted from clarification and from elimination of redundancy.</li> </ul>
Section II Enforcement – Responsible Agency and Enforceable Policies	<ul style="list-style-type: none"> <li>• EO 1998 listed the Chesapeake Bay Local Assistance Department among "other agencies" responsible for "assisting" with implementation of the VCP.</li> </ul>	<ul style="list-style-type: none"> <li>• EO 2002 lists the Chesapeake Bay Local Assistance Department among agencies that have "primary responsibility" for implementing the enforceable policies of the VCP.</li> <li>• EO 2002 made two additions to the list of "other agencies assisting": Department of Transportation and the Economic Development Partnership.</li> </ul>	<ul style="list-style-type: none"> <li>• Not a substantial change. The revision reflects more closely actual practice under the Chesapeake Bay Act and regulations that were approved by NOAA and incorporated into the VCP in 2000. <i>Also note:</i> Acts 2004, Sp.S. I, c. 4, eff. July 1, 2004, in 379 provided: "Notwithstanding Title 10.1, Chapter 21, Code of Virginia, the Chesapeake Bay Local Assistance Department will be merged with the Department of</li> </ul>

			<p>Conservation and Recreation effective July 1, 2004. The powers and duties heretofore exercised by such agency shall hereafter be vested in the Department of Conservation and Recreation.”</p> <ul style="list-style-type: none"> <li>• Not a substantial change. These agencies have always been subject to the enforceable policies and the duties of “all state agencies” spelled out in EO 1998.</li> </ul>
--	--	--	--